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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,748	12/02/2000	Heather Philpott	PH-17	2377
26841	7590	05/25/2005	EXAMINER	
MARK P. BOURGEOIS			PARA, ANNETTE H	
P.O. BOX 95			ART UNIT	
OSCEOLA, IN 46561			PAPER NUMBER	
			1661	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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05222005

DATE MAILED:

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**Commissioner for Patents****Rule 105 Requirement for Information**

The claimed Veronica spicata L. plant cultivar Glory is described in Plant Breeder's Right (PBR) grant number 5056 granted in the European Community on October 25 1999. Application number 971485, was published on February 16, 1998 more than one year prior to the filing date of the instant application. The applicant has not answered the question concerning the public plant availability of the sale of the plant.

A printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. In re Le Grice, 301 F.2d 929, 133 USPQ 365 (CCPA 1962). If one skilled in the art could obtain or reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See Ex parte Thomson, 24 USPQ2d 1618, 1620 (Bd. Pat. App. & Inter. 1992) ("The issue is not whether the [claimed] cultivar Siokra was on public use or sale in the United States but, rather, whether 'Siokra' seeds were available to a skilled artisan anywhere in the world such that he/she could attain them and make/reproduce the cultivar Siokra disclosed in the cited publications.").

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the information to determine when if ever, the claimed plant cultivar Glory was publicly available more than one year prior to the filing date of the instant application.

Furthermore a question remains as to the accessibility of the foreign sales of the claimed plant, the reproducibility of the claimed plant and whether one of ordinary skill in the art would have known of the foreign sale. The foreign sale must not be an obscure, solitary occurrence that would go unnoticed by those skilled in the art. One of ordinary skill in the art would have known where to obtain the claimed plant by, for example by searching the Internet for the UPOV listed breeder "Nordic Nurseries". one could have easily obtained the following contact information listed on the web site [http://www.nordicplants.com/main.htm?page\\_id=30000](http://www.nordicplants.com/main.htm?page_id=30000), Nordic Nurseries Ltd 29386 Haverman Road Abbotsford, BC V4X 2P3 Canada Telephone 604-607-7074, Fax 604-607-7073 info@nordicplants.com. With that information, one of ordinary skill in the art could check the availability of the claimed plant and where to purchase that plant.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine the accessibility of the foreign sales and the reproducibility of the plants.

42

In response to this requirement please provide:

- a) a copy of any publications or advertisements relating to sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world if the sale, offer for sale, or public distribution occurred more than one year prior to the filing date of this application;
- b) any public information available regarding sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world that occurred more than one year prior to the filing date of this application, including the date(s) and location(s) as well as information pertaining to whether this was an obscure, solitary occurrence that would go unnoticed by those skilled in the art;
- c) any information relating to the accessibility or non-accessibility of the claimed plant that one of ordinary skill in the art could have derived from the printed PBR document;
- d) Applicant is also invited to submit any information that would indicate that one of ordinary skill in the art would not have known how to successfully reproduce the plant.

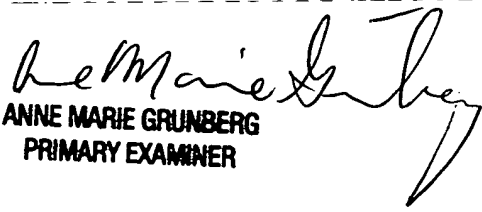
It is reasonable to expect that Applicant or the assignee can readily obtain the requested documents and information.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

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ANNE MARIE GRUNBERG  
PRIMARY EXAMINER